

Members

Sen. Brent Steele, Chairperson
Sen. Brent Waltz
Sen. James Arnold
Sen. Greg Taylor
Rep. Vanessa Summers
Rep. John Day
Rep. David Frizzell
Rep. David Yarde
Gregory A. DeVries
Judge Marianne Vorhees
Robert Bishop
Bruce Pennamped



CHILD CUSTODY AND SUPPORT ADVISORY COMMITTEE

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Authority: IC 33-24-11-1

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MEETING MINUTES¹

Meeting Date: October 16, 2009
Meeting Time: 10:00 A.M.
Meeting Place: State House, 200 W. Washington
St., Room 233
Meeting City: Indianapolis, Indiana
Meeting Number: 3

Members Present: Sen. Brent Steele, Chairperson; Sen. Greg Taylor; Rep. Vanessa Summers; Rep. John Day; Gregory A. DeVries; Robert Bishop; Bruce Pennamped.

Members Absent: Sen. Brent Waltz; Sen. James Arnold; Rep. David Frizzell; Rep. David Yarde; Judge Marianne Vorhees.

Senator Brent Steele, Chairperson, called the third meeting of the Indiana Child Custody and Support Advisory Committee (Committee) to order at 10:20 A.M. The Committee members introduced themselves.

¹ Exhibits and other materials referenced in these minutes can be obtained electronically by requesting copies at licrequests@iga.in.gov. Hard copies can be obtained in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for hard copies may be mailed to the Legislative Information Center, Legislative Services Agency, West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for hard copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.in.gov/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

Execution of paternity affidavits; custody issues.

_____ Mr. Chris Worden, a family law attorney, stated that three questions apply in looking at paternity affidavits: (1) what must we do; (2) what should we do; and (3) what do we do. Mr. Worden provided information on federal requirements regarding paternity affidavits and provided the following information:

- A man has sixty days to rescind a paternity affidavit. After that time, the man may only set aside a paternity affidavit if a court determines that fraud, duress, or material mistake of fact existed in the execution of the paternity affidavit and a genetic test excludes the man as the father of the child.
- Under case law, "fraud" generally involves conscious wrongdoing but "fraud" and "material mistake of fact" are not defined in the state paternity affidavit statutes. What constitutes a "material mistake of fact" changes from court to court.
- In at least twenty percent of cases where paternity is disputed and a genetic test is performed, the man is not the biological father of the child.

In addition, Mr. Worden asked why the information provided to fathers and mothers is not required to be part of the paternity affidavit itself. He made the following points and recommendations:

- The policy surrounding paternity affidavits should be to identify the biological father of the child. There are various reasons why this should be the policy, including knowledge of medical history and organ donation.
- A biological father is more likely to pay child support than a man who discovers that he is not the biological father of a child but is required to pay child support for the child because he executed a paternity affidavit.
- The paternity affidavit itself should be amended because the paternity affidavit does a poor job of advising people of their rights and responsibilities.
- The paternity affidavit should:
 - (1) require the mother to state with certainty that the man is the biological father of the child;
 - (2) contain a written statement of the criminal repercussions for knowingly or intentionally falsely naming a man as the child's biological father;
 - (3) clearly explain the father's rights and responsibilities; and
 - (4) provide information as to how a mother or father can enforce the rights established by the execution of a paternity affidavit.
- An executed paternity affidavit should be given the full effect of a court order that provides for reasonable parenting time in accordance with the Indiana Parenting Time Guidelines.

Senator Steele asked for Mr. Worden's opinion on amending the paternity affidavit statute to provide that a genetic test that shows the man is not the father of a child establishes that a material mistake of fact existed in the execution of a paternity affidavit.

Mr. Worden stated that he had the following concerns: (1) There would be no time limit for when a man could challenge paternity. (2) There would need to be a formal procedure established for genetic testing.

Mr. Bruce Pennamped, a Committee member, expressed concern with giving a paternity affidavit the effect of a court order because there would be no determination of the best interests of the child. Mr. Pennamped also indicated that giving a paternity affidavit the force of a court order may lead to more litigation because people will bring cases to enforce the rights given under the paternity affidavits through contempt proceedings.

Representative Vanessa Summers, a Committee member, stated that trying to put women in a box will force them to lie about a man being the father of the child. Mr. Worden explained that he does not want the woman to feel forced to name the father of the child, but instead, to encourage the woman not to name a man as the father if she does not know or is not certain who the father is. The Committee also discussed requiring a genetic test when a man signs a paternity affidavit or requiring a genetic test at the time the parties go to court to enforce parenting time or child support. Mr. Robert Bishop, a Committee member, stated that there are federal code provisions that are not in state statute and that the Committee would need to be careful not to conflict with federal law.

Grandparent visitation rights; great-grandparent visitation.

_____ Ms. Carolyn Meadows, a grandparent and great-grandparent, described her situation as a great-grandparent who had established a relationship with her great-grandchildren but was no longer being allowed to visit with them. She stated that she hoped a law would pass that would allow her to seek visitation with her great-grandchildren.

Mr. Jerry Meadows, a grandparent and great-grandparent, supported Ms. Meadows' testimony and asked that the Committee approve legislation to allow him to seek visitation with his great-grandchildren.

Senator Steele explained Preliminary Draft 3125² concerning changes to the grandparent visitation statutes and asked the Committee members for their input on the subject. Mr. Pennamped stated that grandparent and great-grandparent visitation is a timely issue given that individuals are living longer. He stated that he favors the great-grandparent concept with regards to a great-grandparent who has had meaningful contact with a great-grandchild but that he would have difficulty creating a relationship where before there had not been one. Representative Summers asked how a grandparent or great-grandparent would show meaningful contact. Senator Steele stated that "meaningful contact" is not defined in the preliminary draft but that courts have looked at what constitutes meaningful contact in cases involving step-parents. Representative John Day, a Committee member, noted that these are private relationships and the Committee should consider whether the government's role should be limited. He asked whether Senator Steele's concept is that the government should intervene for the best interests of the child. Senator Steele stated that is his concept and that more grandparents were raising grandchildren these days.

Mr. Pennamped indicated that he would like to see the legislation include factors that a court should consider in determining the best interests of the child in a grandparent

² Exhibit 1

visitation case. Mr. DeVries indicated that his heart goes out to grandparents and great-grandparents who want to visit their grandchildren and great-grandchildren but that the Committee should proceed with great caution in taking away a parent's ability to determine who has contact with his or her child.

Other committee business.

Mr. Donald Beatty discussed the case of *D.B v. M.B.V.*, 913 N.E.2d 1271 (Ind. Ct. App. 2009) which was an opinion handed down by the Court of Appeals of Indiana on October 2, 2009. Mr. Beatty indicated that as a result of this case and others, the language in IC 31-17-4-2 should be changed from "might" to "would." He also noted concern with the award of attorneys fees to the mother in the case.

Committee members received a copy of a request for an amendment³ to the grandparent visitation statute from Ms. Judy Brockriede and a letter⁴ expressing concerns regarding the Indiana Parenting Time Guidelines from Ms. Jatina Altmann.

Senator Steele adjourned the meeting at 11:40 A.M.

³ Exhibit 2

⁴ Exhibit 3